United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

76-2118

To be argued by
RAYMOND L. SWEIGART

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2118

PATRICK VINCENT REO,
Petitioner-Appellant,

—v.—

MAURICE H. SIGLER, Chairman, United States Parole Board and GEORGE C. WILKINSON, Warden, Federal Correctional Institution, Danbury, Connecticut,
Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

Statement of the Case

On or about April 26, 1976, the petitioner, Patrick Vincent Reo, commenced an action in the United States District Court for the District of Columbia against Maurice H. Sigler, Chairman of the United States Parole Board. At that time the petitioner was incarcerated in the United States Penitentiary, Lewisburg, Pennsylvania, pursuant to a sentence of twelve (12) years imposed on May 26, 1972 by the United States District Court for the District of New Jersey. The gravamen of the suit filed in the District of Columbia was a challenge to the constitutionality of the methods and reasons relied upon in denying petitioner release on parole.

On May 21, 1976, the petitioner was ordered to show cause why his suit should not be transferred to the Middle District of Pennsylvania where he was incarcerated.

On June 3, 1976, the petitioner was transferred to the Federal Correctional Institution, Danbury, Connecticut and on June 4, 1976, the District Court for the District of Columbia entered an order transferring the action to the United States District Court for the District of Connecticut.

On June 21, 1976, Judge Robert C. Zampano, treating petitioner's moving papers as seeking habeas corpus relief, entered an Order to Show Cause why a writ of habeas corpus should not issue. The respondent, Maurice Sigler was ordered to reply on or before July 14, 1976.

Thereafter, the petitioner filed an amendment to his petition stating further jurisdictional claims in support of the relief he requested—release from custody. The amendment was served by the petitioner upon the United States Attorney for the District of Connecticut. On July 14, 1976, respondent Sigler filed a response to the Court's Order to Show Cause supported by an affidavit and memorandum of law.

On August 16, 1976, the petitioner Reo, filed his Replication and served same upon the United States Attorney as counsel for respondent Sigler.

On September 22, 1976, Judge Zampano entered his Memorandum of Decision denying the petitioner's request for habeas corpus relief and dismissing his petition. On that same day, the Clerk of the United States District Court for the District of Connecticut entered judgment in accordance with Judge Zampano's decision.

On September 24, 1976, petitioner filed his Notice of Appeal to this court and was granted leave to proceed in forma pauperis on September 20, 1976.

On January 31, 1977, the appeal was dismissed because it was not docketed and the provisions of the Civil

Appeals Management Plan of this Court were not satisfied.

On May 17, 1977, counsel appeared on behalf of the petitioner and moved to set aside the Order dismissing the appeal, to reinstate the appeal, and to file a brief and appendix.

On May 27, 1977, said motion was granted and this appeal followed.

Statutes and Rules Involved

Title 18, United States Code,

Section 1951. Interference with commerce by threat or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by

wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

June 25, 1948, c. 645, 62 Stat. 793.

Title 28, United States Code,

Section 2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a Justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

June 25, 1948, c. 646, 62 Stat. 965.

Section 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

June 25, 1948, c. 646, 62 Stat. 965.

Title 28, Code of Federal Regulations,

Section 2.20. Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

ADD

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW	* * *			
LOW MODERATE	* * *			
MODERATE Bribery of public officials Counterfeit currency (passing/possession $1,000 to $19,999). Drugs: Marihuana, possession with intent to distribute/sale (less than $5,000). "Soft drugs", possession with intent to distribute/sale (less than to $5,000) Embezzlement (less than $20,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (single weapon-not sawed-off shotgun or machinegun). Income tax evasion ($10,000 to $50,000) Interstate transportation of stolen/forged securities (less than $20,000). Mailing threatening communications Misprision of felony Receiving stolen property with intent to resell (less than $20,000). Smuggling/transporting of aliens Theft/forgery/fraud ($1,000 to $19,999) Theft of motor vehicle (not multiple theft or for resale).	12 to 16 mo.	16 to 20 mo.	20 to 24 mo.	24 to 30 mo.
HIGH	* * *			
VERY HIGH Robbery (weapon or threat) Drugs: "Hard drugs" (possession with intent to distribute sale) (no prior conviction for sale of "hard drugs"). "Soft drugs", possession with intent to distribute/sale (over $5,000). Extortion Mann Act (force) Sexual act (force)	26 to 36 mo.	36 to 48 mo.	48 to 58 mo.	58 to 68 mo.
GREATEST Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury. Aircraft hijacking Drugs: "Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs"). Espionage Explosives (detonation) Kidnapping Willful homicide	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			

NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

Section 2.24. Review of panel recommendation by the Regional Commissioner

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the above, a Regional Commissioner may, on the motion of the Administrative Hearing Examiner, modify the recommendation of a hearing examiner panel that is outside the guidelines to bring such decision closer to or to the nearer limit of the appropriate guideline range.

Questions Presented

1. Did the District Court have jurisdiction to hear the petitioner's application for habeas corpus relief?

2. Was the District Court correct in upholding the Parole Board's classification decision which was based in part on fifty counts of an indictment against petitioner, which counts had been dismissed?

3. Can the Pre-Sentence Report, which was not part of the record below, be appended to the appellate record?

Statement of Facts

The petitioner was charged in a fifty-one (51) count indictment in the District of New Jersey with conspiracy, obstruction of commerce by robbery, interstate transportation of kidnapped persons, interstate transportation of stolen goods, receiving, and concealing goods stolen from interstate commerce and interstate transportation of stolen motor vehicles. Seven co-defendants were also charged in all fifty-one (51) counts, two co-defendants were charged only in twenty-five (25) counts.

On March 16, 1972, the petitioner pled guilty to Count 4 only of the indictment. Count 4 alleged a violation of 18 U.S.C. § 1951, interference with commerce by threat or violence and charged the petitioner with conspiracy in the obstruction of commerce by robbery in New Jersey from about May 10, 1971 and continuing thereafter until July 29, 1971. It further charged the petitioner with actual and threatened force and violence against drivers of various laden motor trucks travelling in interstate commerce.

On May 26, 1972, the petitioner was sentenced to a term of imprisonment for twelve (12) years.

On February 3, 1976, the petitioner was afforded an initial parole hearing at the United States Penitentiary, Lewisburg, Pennsylvania, where he was then confined. After a hearing, the panel tentatively recommended that the petitioner be admitted to parole effective April 9, 1976.

By *Notice of Action* dated February 19, 1976, the petitioner was formally notified by the Regional Director of the Northeast Region of the Board of Parole that his case had been referred to the National Directors of the Board of Parole for further consideration pursuant to 28 C.F.R. § 2.24.

Thereafter, the petitioner was informed by the National Directors in a *Notice of Action* dated March 1, 1976, that he would be continued in custody for an institutional review hearing in December of 1977. The reasons for parole denial were listed as follows:

> "Your offense behavior has been rated as greatest severity because you were involved in a large scale hijacking operation in which persons were kidnapped and in which one victim died. You have a salient factor score of 8. You have been in custody a total of 47 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of more than 45 months to be served before release for cases with good institutional program performance and adjustment."

The offense behavior rating of "greatest severity" as listed in the *Notice of Action* dated March 1, 1976, reflected the Parole Board's assessment of the actual circumstances of the crime committed by the petitioner and his involvement with the hijacking ring. The rating was based upon the information contained in the pre-sentence report dated May 16, 1972, which was prepared for use in the District Court in New Jersey at the petitioner's sentencing. That report stated that the petitioner was charged in a fifty-one (51) count indictment along with nine co-defendants. It further stated that the petitioner pled guilty to Count 4 only, interference with commerce by threats or violence in violation of 18 U.S.C. § 1951. The report went on to describe the charge in Count 4 and mentioned the overt acts engaged in by the petitioner. These involved making his truck stop available for storage and the switching of merchandise as well as actually assisting in the switching and disposal of the stolen merchandise.

On March 12, 1976, the petitioner appealed the decision of the National Directors. The Regional Commissioner, by a *Notice of Action* dated March 24, 1976,

notified the petitioner that the Order dated March 1, 1976 was affirmed since the reasons given supported the decision. Furthermore, no information submitted for the requested review was deemed significant enough to effect the decision. On April 23, 1976, the petitioner appealed the decision of the Regional Commissioner. By a *Notice of Action* dated June 8, 1976, the National Appeals Board informed the petitioner that the previous decisions were affirmed and that the reasons given supported denial of parole.

ARGUMENT

I.

The District Court Did Not Have Jurisdiction To Grant Petitioner's Application For Habeas Corpus Relief Since Neither The Writ Nor The Order To Show Cause Were Directed To The Person Having Custody Over The Petitioner.

Although the District Court did not consider the question of jurisdiction in dismissing petitioner's application for habeas corpus relief on its merits, this Court's recent ruling in *Billiteri* v. *United States Board of Parole*, 541 F.2d 938 (2d Cir. 1976) clearly establishes that jurisdiction to grant such relief was lacking.

This action was originally commenced in the United States District Court for the District of Columbia seeking declaratory relief under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* Respondent assumes that petitioner chose that forum to litigate his claims because of the ruling in *Pickus* v. *United States Board of Parole*, 507 F.2d 1107, 1105-10. (D.C. Cir. 1974) which found the Administrative Procedure Act to provide an inde-

pendent source of jurisdiction. Without objection from the petitioner, however, the matter was transferred to the District of Connecticut the place of the petitioner's confinement, where amended claims for habeas corpus relief were added. The Amendment also suggested that a Writ of Mandamus was available to the petitioner although doubt was expressed as to this.

The petitioner did not, however, name his custodian, the Warden of the Federal Correctional Institution at Danbury, Connecticut as a respondent in the proceedings. The provisions of 28 U.S.C. § 2242 clearly require that a petition for habeas corpus relief must "name . . . the person who has custody over" the petitioner, and § 2243 provides that the writ, or order to show cause, "shall be directed to the person having custody of the person detained."

Maurice Sigler, Chairman of the United States Board of Parole, who was named as respondent herein, was not the petitioner's custodian. *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 948; and *Olson* v. *California Adult Authority*, 423 F.2d 1326 (9th Cir.), *cert. denied*, 398 U.S. 914 (1970). Clearly it would have imposed no great hardship on the petitioner to have brought this action as a petition for habeas corpus relief against the Warden of the Federal Penitentiary, Lewisburg, Pennsylvania, in the Middle District of Pennsylvania, or against the Warden of the Federal Correctional Institute, Danbury, Connecticut, in the District of Connecticut after his transfer to that institution. "As he did not, the present case must be dismissed for lack of jurisdiction over an application for a writ of habeas corpus, which is the only appropriate means for testing out his claims to achieve the special relief requested." *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 948.

II.

The District Court Was Correct In Upholding The Parole Board's Classification Decision Which Was Based On Consideration Of The Petitioner's Indictment And Guilty Plea.

The petitioner's principal contention is that the Parole Board acted in an arbitrary and capricious manner in using the dismissed counts of the indictment as a factor in determining his severity of offense classification as established in 28 C.F.R. § 2.20. He claims that the Parole Board can consider the indictment only if there is evidence in the pre-sentence report which substantially connects him with the indicted crimes. An examination of the relevant case law, however, shows that there is no basis for this claim.

The principal cases regarding sentencing and parole decisions in conjunction with indictments are *United States* v. *Needles*, 472 F.2d 652 (2d Cir. 1973) and *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 938. In *United States* v. *Needles*, *supra*, the appellant was indicted with thirty (30) separate violations of the Gun Control Act. He pled guilty to one count and the remaining twenty-nine (29) counts were subsequently dismissed. Prior to sentencing, appellant's counsel reviewed the pre-sentence report and moved to withdraw the plea because the report allegedly contained inaccurate information regarding the non-pleaded counts. The motion was denied and affirmed on appeal. In its decision the Court stated:

> no defendant can reasonably expect the probation office to refrain from seeking whatever information the prosecutor may have regarding the case then before the court or any other involving that defendant. In fact failure to so inquire or refusal to respond accurately would be a breach of duty.

> What appellant's argument is reduced to, in the last analysis, is that the information that led to a 30 count indictment should have been hidden from the sentencing judge and that appellant could have reasonably so expected. The argument falls of its own weight. *United States* v. *Needles*, *supra*, 472 F.2d at 654-55.

Thus the Court concluded that the sentencing judge can and should consider the original indictment. It did not, however, say that the consideration was permissible only if other evidence connects the defendant with the crime. There was no qualification. Consideration of an indictment in and of itself is permissible.

The *Needles* decision must be read in conjunction with *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 948. Although the case was dismissed for lack of jurisdiction, the decision described the factors that a judge can consider in sentencing and said that the Parole Board had authority to consider the same factors in reaching parole decisions. Citing *Needles*, the court stated that a judge should take into account "offenses charged in dismissed counts of an indictment. . ." *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 944. Again no absolute and provable evidentiary link between the defendant and the dismissed counts is required. In fact, the court stated that the sentencing judge, and likewise the Parole Board could "properly take into account evidence of crimes of which the accused was acquitted." *Billiteri* v. *United States Board of Parole*, *supra*, 541 F.2d at 944. If evidence of a criminal act after acquittal is permissible for consideration then surely an indictment which was returned because there was probable cause to believe the petitioner may have committed an offense, is a sufficient basis for determining a severity of offense classification.

Additional support regarding the use of such indictments is found in *Lupo* v. *Norton*, 371 F. Supp. 156 (D. Conn. 1974). There the petitioner challenged the use of the guideline table based on his alleged offenses rather than the convicted offense, and the adequacy of the reason given for denying parole. In deciding that a new parole hearing should ensue, Judge Newman stated that "consideration of an alleged offense violates no cognizable constitutional right..." *Lupo* v. *Norton*, *supra*, 371 F. Supp. at 161. In addition, he cited 28 C.F.R. § 2.52(c) (now 28 C.F.R. § 2.20(d)) which states that "especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed." An alleged offense or dismissed count is such an aggravating circumstance. More importantly, Judge Newman did not require that the alleged offense be substantiated. The alleged offense alone was sufficient. The new hearing was required, however, because the Board failed to follow its own guidelines regarding a statement of reasons for parole denial. Denial had been based on consideration of alleged offenses; and Judge Newman held that failure to state this significantly, prejudiced the petitioners because it deprived them of an opportunity to challenge the decision. In the case at bar, however, the *Notice of Action* dated March 1, 1976 clearly stated that the charges involved in the dismissed indictments were the bases for the greatest severity rating. Thus, the petitioner, with full knowledge of the reasons for denial, was able to challenge the decision in his administrative appeal of March 12, 1976.

The *Needles*, *Billiteri*, and *Lupo* decisions are the principal cases dealing with the use of dismissed indictments and alleged offenses in sentencing and parole decisions. All the decisions allow these factors to be considered in and of themselves; none require that there be a substantial connection (in a sense which could be

proved at trial) between the defendant and the alleged offense before they can be considered. Thus, the petitioner's claim has no merit. Respondent contends therefore, that the District Court's opinion upholding the Parole Board decision be affirmed.

The respondent also contends that there is sufficient information in the guilty plea to warrant a "greatest" severity classification without considering the dismissed counts of the indictments.

The petitioner pled guilty to Count 4 of a fifty-one (51) count indictment. Count 4 charges the defendants, including Patrick Vincent Reo, with "conspiracy in the obstruction of commerce by robbery in New Jersey from about May 10, 1971, and continuing thereafter until July 29, 1971. Actual and threatened force and violence and fear of injury against the drivers of various laden motor trucks is charged in conspiracy to delay commerce." The charge of conspiracy to delay commerce is not listed in the parole policy guidelines. 28 C.F.R. § 2.20. However, Note 2 of § 2.20 states that "[i]f an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed." The appellant pled guilty to actual force and violence. The only category primarily concerned with violent crimes is the "greatest" category. In fact only one other category, "very high," lists a single violent crime, a forceful sexual act. Thus the comparison shows that the petitioner's severity rating was properly determined. Coupled with its broad discretionary powers, *Shelton* v. *United States Board of Parole*, 388 F.2d 567 (D.C. Cir. 1967), it is clear that the Parole Board was within its authority when it determined the petitioner's severity rating.

III.

The Addition Of The Pre-sentence Report To The Joint Appendix Is Improper.

The petitioner, without the approval of the respondent, has added the pre-sentence report to the joint appendix. This addition is improper and should not be permitted.

The pre-sentence report was not an exhibit at the petitioner's trial in the District of New Jersey, nor was it introduced into evidence before the court in the District of Connecticut. Furthermore, although a pre-sentence report is prepared for the court, it does not become part of the trial record. *United States* v. *Conway*, 296 F. Supp. 1284 (D.D.C. 1969). In *United States* v. *Delaney*, 442 F.2d 120 (D.C. Cir. 1971) the defendant moved to make a pre-sentence report part of the record on his direct appeal. The court stated that in most cases an appellate court has no occasion to inspect a probation officer's report as a matter included in the appellate record. The report could be made a part of the record, however, where questions are raised concerning the reasons for sentencing. Such a question did arise in the *Delaney* case and the report was added. No such question is involved in the case at bar, however. The *Notice of Action* was absolutely clear in stating the reasons for parole denial, the dismissed indictments. The report is clearly not necessary under applicable law and its addition to the appellate record would operate in general derogation of the principle that the appellate court should not consider what the district court did not.

The petitioner cites a number of cases which allow objects to be judicially noticed by the Courts of Appeals. *United States* v. *Merrick Sponsor Corp.*, 421 F.2d 1076, 1079 n.2 (2d Cir. 1970); *Kaliman* v. *Liberty Mutual Fire Insurance Co.*, 300 F.2d 547, 549 (2d Cir. 1962); *Moore*

v. *Estelle*, 526 F.2d 690 (5th Cir.), *cert. denied*, — U.S. —, 96 S. Ct. 3180 (1976). While the courts do have such power, there is no reason to invoke it when the object concerned would not aid the court in reaching a decision.

In the alternative event that the Court does consider the pre-sentence report, the appellee submits that it does not necessarily give the appellant quite the clean bill of health that he intimates. Its primary focus is on his past record and family life. It does not engage in minute analysis of his individual role, and no presumption of non-involvement should arise from this treatment. In the evaluative summary, it does refer to his active participation in the operation. And whatever exculpatory suggestions there are in the report are under the heading of "Defendants' Version". In short, the tenor of the report is not at odds with the interpretation placed upon it by the Parole Commission in this case.

CONCLUSION

For all the foregoing reasons, the petitioner-appellant's request for habeas corpus relief was properly denied in the District Court.

Respectfully submitted,

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 76-2118

PATRICK VINCENT REO,
PETITIONER-APPELLANT

vs.

MAURICE H. SIGLER, ET AL,
RESPONDENT-APPELLEE

AFFIDAVIT OF SERVICE BY MAIL

ert Sensale, being duly sworn, deposes and says, that deponent party to the action, is over 18 years of age and resides at 914 Brooklyn Avenue, lyn, New York

hat on the 1st day of August, 1977, deponent the within Brief for the Appellee

F. Timothy McNamara, Esq., 102 Oak Street, Hartford, Connecticut 06106

ey(s) for the Petitioner-Appellant in the action, the address designated by said attorney(s) for the e by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post official depository under the exclusive care and custody of the United States Post Office department the State of New York.

Albert Sensale

to before me,

1st day of August, 1977

Edward A. Quimby

EDWARD A. QUIMBY
Notary Public, State of New York
No. 24-3183500
Qualified in Kings County
Commission Expires March 30, 1978